MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2017/2018

ULV4612 - LAW OF EVIDENCE I

(All Sections / Groups)

25 October 2017

Reading Time : 9.00am – 9.15am (15 Minutes)
Answering Time : 9.15am - 12.15pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 Questions only.

3. Answer any **FOUR** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:

   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007; and
   iii. CRIMINAL PROCEDURE CODE

   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

"Even though s. 90C of the Evidence Act 1950 provides for the primacy of ss. 90A and 90B over any other law relating to admission and proof of evidence, the other provisions of Evidence Act 1950 providing for admissibly [sic] of documents are not necessarily inconsistent with s. 90A....[A]ccordingly, the computer-generated documents that had been sought to be relied upon by the plaintiff could be admissible even in circumstances where the requirements of s. 90A of the Evidence Act 1950 had not been complied with, provided either that the makers of the document were called or that the documents were admissible under any other established exception to the rule against hearsay."

(Per Azizul Azmi Adnan JC in ***Mohamad Fauzi Che Rus v JR Joint Resources Holdings Sdn .Bhd*** **[2016] 6 CLJ 266, at page 278 – 279)**

Critically evaluate the above statement in the context of the interpretation of sections 90A, 90B & 90C of the Evidence Act 1950 and the admissibility of computer generated documents as an exception to hearsay.

(Total: 25 marks)

QUESTION 2

"It is trite law that the discretion lies with the prosecution to call all such witnesses as are essential to the unfolding of the narrative on which the prosecution's case is based... At the end of a trial, s. 182A of the Criminal Procedure Code imposes a duty on a trial court to consider all the evidence adduced before it and to decide whether the prosecution has proved its case beyond reasonable doubt."

(Per Hasan Lah FCJ in ***Amri Ibrahim & Anor v Public Prosecutor*** **[2017] 1 CLJ 617, at page 630)**

Critically evaluate the above statement in the context of the application of the adverse inference principle under s. 114(g) of the Evidence Act 1950.

(Total: 25 marks)

Continued...

QUESTION 3

Roger and Mike ("the plaintiffs") are the administrators of the estate of one Mr Raja ("the deceased"). The deceased was the registered owner of a property known as Lot 534 held under GM186, Mukim 11, Daerah Barat Daya, Bayan Lepas, Pulau Pinang ("the land").When the plaintiffs carried out a land search they discovered that the land had been transferred to Mr Greedy ("the defendant") a property developer , who is now the registered owner. Mr Greedy claims that the deceased had transferred the land to him pursuant to an agreement between them dated 1 August 2016 (3 months before Mr Raja's death).

According to the plaintiffs, the deceased who suffered from dementia, was bed ridden in the last 6 months before his death. Therefore, he could not have executed the agreement to transfer and lacked mental capacity to do so. The plaintiffs allege the following:

i) that agreement dated 1 August 2016 is a forgery and the transfer was fraudulently effected by the defendant; and
ii) that the deceased lacked the mental capacity to execute the agreement on 1 August 2016

The plaintiffs have filed a suit against the defendant in the High Court for a declaration that the agreement and the transfer of the land to the defendant was *void ab initio*. The following evidential issues arise during trial:

a. which party bears the burden of proof and what is the standard of proof to be satisfied on issue (i) and (ii) above. Advise the parties;

(8 marks)

b. the plaintiffs propose to tender in evidence a medical report prepared by Dr. Baik on the diagnosis and treatment of the deceased for dementia. Dr. Baik is currently in India for his specialist training. Advise the plaintiffs on the admissibility of this evidence;

(8 marks)

c. the defendant proposes to tender in evidence *WhatsApp* messages exchanged between him and the deceased during the negotiations of the agreement to transfer. Advise the defendant on the admissibility of this evidence.

(9 marks)

(Total: 25 marks)

Continued...

QUESTION 4

Mat, aged 55 is charged with rape. The victim, X is aged 7. Mat is alleged to have committed the offence on 1 April 2016. The prosecution's case is that Mat who is X's neighbour had offered her a lift home from school at about 2.30pm, but instead took her to a lonely disused quarry and committed the offence. Due to her tender age and the trauma of the incident the prosecution does not propose to call X as a witness. The prosecution proposes to adduce the following evidence during trial to establish its case:

a. testimony from X's mother, that X had complained to her immediately after she returned home on 1 April 2016 as follows: ***"The man who lives next door had disturbed me, I hate him!!"***;

b. testimony of Baik , the security guard at X's school that she saw X get into a car driven by Mat on 1 April 2016 at about 2.30pm. Baik had picked out Mat during the identification parade which was conducted on 14 April 2016. In her earlier witness statement dated 2 April 2016, Baik had described the man she saw as a young Malay man of average build. Baik was shown a photo of Mat just before the ID parade was held. Mat was the only Malay man present during the identification parade and is of heavy build;

c. a witness statement from Terang who was fishing at the quarry that he saw X run past him sobbing, with torn clothing at about the material time on 1 April 2016. Terang came forward as a witness after he read a news report about the case and had made a witness statement to Inspector Ali on 3 April 2016. The prosecution proposes to adduce Terang's witness statement through Inspector Ali as all efforts to secure Terang's attendance as a witness has failed.

Advise the defence on the evidential issues involved.

(Total: 25 marks)

Continued...

QUESTION 5

Gila has been charged and convicted of the murder of Paris, his business rival. The prosecution's case is that Gila had attacked and killed Paris at an palm oil estate located at Lot 4136, Jalan Sungai Long, Kajang. The prosecution tendered the following evidence during trial which was admitted by the judge despite the objections from the defence counsel:

a. the statement made by Gila to Inspector Dan (PW1) during the interrogation that he had killed Paris and could show him where the body was buried. Gila's words which were recorded by Inspector Dan were follows: ***"I killed Paris and I can show you where I buried him"***. The defence had objected to this statement on grounds that it was involuntary and that the police had already found the body before the statement was made;

b. Gila's admission that he had killed Paris, recorded by Tuan Majid (PW3), a magistrate;

c. a *'parang'* (Exhibit: P1) was found in Gila's car and was tendered in evidence as the murder weapon. The defence objected to the admissibility of the *'parang'* on grounds that the search was illegal and the chain of evidence had been broken as there are no records on who took custody and control of the *'parang'* after it was seized. Further the prosecution had offered no forensic evidence to establish that it was the murder weapon.

Advise Gila who wishes to appeal against his conviction.

(Total: 25 marks)

End of Page